

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

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MAY 13 1997

ISIDRO CACHUA,

Case No. MON 181-726 (MF); 206-586

FINDINGS AND ORDER AND

ORDER GRANTING
DEFENDANT'S APPEAL TO
VACATE DETERMINATION OF
REHABILITATION DECISION

Applicant

vs.

DARCHEM ENGINEERING, INC.;
SAFECO INSURANCE OF AMERICA,
Defendants

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Appeal from Decision and Order of Rehabilitation Bureau having been filed herein, all parties having appeared and the matter having been regularly submitted, the Honorable Yosh Yamanaka, Workers' Compensation Judge, now finds and orders as follows:

FINDINGS OF FACT

1. In accordance with the Opinion on Decision, Applicant's request for dispute resolution was untimely.
2. In accordance with the Opinion on Decision, Applicant cannot benefit further from rehabilitation. Applicant unreasonably walked out of class in response to his instructor's reasonable request that the class speak in English.

ORDER

GOOD CAUSE APPEARING:

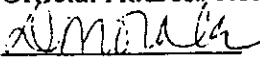
IT IS ORDERED that the September 20, 1996, Determination be and the same hereby is vacated and defendant's liability for vocational rehabilitation be terminated after January 26, 1996.

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Date: 5/9/97


YOSH YAMANAKA
WORKERS' COMPENSATION JUDGE

Filed and served by mail
on all parties as shown on
the Official Address Record:

By: 
D. Morales

CASE NO. MON 181-726 (MF); 206-586

ISIDRO CACHUA

vs.

DARCHEM ENGINEERING, INC.,
SAFECO INSURANCE OF AMERICA,

INJURY DATES:

NOVEMBER 20, 1995 through
JANUARY 26, 1996;
FEBRUARY 22, 1994

WORKERS' COMPENSATION JUDGE:

YOSH YAMANAKA

OPINION ON DECISION

BACKGROUND

Applicant sustained an admitted injury and was found to be a qualified injured worker ("QIW"). Ms. Anat Fersht was selected to be the Qualified Rehabilitation Representative ("QRR"). Applicant's initial choice for a vocational goal was the procurement of a Class A driver's license, but that goal was determined to be not feasible because of his DMV violations.

Eventually, Applicant agreed to a vocational objective of retraining as a printer, with 13 weeks of training to be provided at Courtesy Printing, beginning 11/20/95. According to the witnesses' testimony and the vocational reports, Applicant made "good progress" and "excellent progress" at Courtesy Printing. However, about three weeks prior to his graduation date, Applicant had an altercation with Instructor Richard Emilienburg on 1/26/96 and quit participating in vocational rehabilitation.

An Informal Conference was held on 2/1/96, and although there were apologies by the school, Applicant refused to continue his training at Courtesy Printing. Defendants then served him on 3/1/96 with a Notice of Termination of benefits. In response, Applicant requested dispute resolution, although his RU-103, filed 4/12/96, was untimely.

Notwithstanding Applicant's untimely RU-103, a Formal Conference was scheduled for 8/7/96. However, as Applicant failed to appear, the Formal was rescheduled for 9/18/96. Following the Formal, Rehabilitation Consultant Jordan issued her Determination on 9/20/96. The Determination ordered appointment of an IVE and payment of retroactive Vocational Rehabilitation Maintenance Allowance (VRMA). Defendants appealed therefrom and two days of testimony ensued.

DISCUSSION

It is undisputed that fellow student Walter and Walter's wife contacted Courtesy Printing and requested that instructors and students address Walter in English so he could improve his communication skills. Moreover, it is undisputed that greater facility in the English language would enhance a printer's marketability. In response to Walter's request, Instructor Emilienburg addressed Applicant's class as a whole, and informed the students that they were to speak to Walter in English, not in Spanish.

Applicant understood the school to be bilingual, so he "felt insulted" about the instructor asking him to address Walter in English. "It was reasonable for any instructor at school to encourage him to speak English, but they can't order him. They should have said 'please.'" "If Walter had personally asked him, maybe he would have spoken English with Walter." He believes that Instructor Emilienburg responded, "If you're not going to speak English to Walter, you're going to get the hell out of here." Instructor Emilienburg testified that, after Applicant yelled out, "You can't do this!" he responded, "The rules are the rules; [Applicant] could leave if he does not follow the rules." He did not tell Applicant that he had to leave. Moreover, "He does not have the authority to terminate students, only Steve and Rose do." Applicant vacillated between testifying that his instructor "has no authority to kick him out of school," and that, "He doesn't know whether Richard had the authority."

By his own admission, Applicant had two prior encounters with Instructor Emilienburg regarding his late arrivals. Because of Applicant's tardiness, the instructor purportedly "threatened to report him to the insurance company so that they would stop his checks." The instructor testified that he did not even know the students' insurance companies. Finally, at the time Applicant left school, "he was discouraged about his job opportunities."

Based on the testimony of all the witnesses, the Court concludes that (1) Instructor Emilienburg reasonably requested his class to speak English when addressing Walter; (2) Applicant took offense because his instructor failed to say, "please"; (3) School Administrator Rose Zone apologized for any misunderstanding and urged Applicant to return to his training program; (4) QRR Anat Fersht urged Applicant to complete his training at Courtesy Printing, especially in view of the fact that he was only three weeks from completing his training; and (5) Applicant unreasonably refused to complete his Plan despite numerous opportunities.

CONCLUSION

Cal. Code Regs., tit. 8, section 10131(b) provides that, "If the employee wishes to object to the notice of Termination of Vocational Rehabilitation Services, the objection must be filed within twenty days Absent timely objection by the employee, the employer's liability for vocational rehabilitation services will be presumed terminated." In the instant case, Applicant failed to timely object to defendants' Notice of Termination. Thus, it was error for the Consultant to set the matter for Formal Conference.

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Moreover, Labor Code section 4643 provides that, "If the employee . . . unreasonably fails to cooperate in completing an approved vocational rehabilitation plan, the employee shall not be entitled to receive that portion of the maintenance allowance payable . . . for the period of unreasonable failure." The Court finds that Applicant unreasonably walked out of class in response to his instructor's reasonable request that the class speak to one of students in English. Moreover, although School Administrator Zone apologized and Applicant was urged by the QRR to complete his training, he unreasonably refused to complete the three remaining weeks of training. As such, the 9/20/96 Determination will be vacated and defendants' liability for vocational rehabilitation benefits will be ordered terminated after 1/26/96.

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Date: 5/9/97

By: D. Morales
D. Morales

Yosh Yamanaka
YOSH YAMANAKA
WORKERS' COMPENSATION JUDGE